

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
ANTOLINI, DINO, : Docket #1:19-cv-09038-  
 : GBD-SDA  
 :  
Plaintiff, :  
 :  
- against - :  
 :  
McCLOSKEY, AMY et al, : New York, New York  
 : April 30, 2021  
 :  
Defendants. :  
 : TELEPHONE CONFERENCE  
----- :  
 :

PROCEEDINGS BEFORE  
THE HONORABLE JUDGE STEWART D. AARON,  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: FINKELSTEIN LAW GROUP, PLLC  
BY: STUART H. FINKELSTEIN, ESQ.  
338 Jericho Turnpike  
Syosset, NY 11791  
718-261-4900

For the Defendants,  
Amy McCloskey, Dimur  
Enterprises, Inc., and  
Theresa Laurent: LEVIN-EPSTEIN & ASSOCIATES, P.C.  
BY: EUNON JASON MIZRAHI, ESQ.  
420 Lexington Avenue, Suite 2525  
New York, NY 10170  
212-792-0048

Transcription Service: Carole Ludwig, *Transcription Services*  
155 East Fourth Street #3C  
New York, New York 10009  
Phone: (212) 420-0771  
Email: [Transcription420@aol.com](mailto:Transcription420@aol.com)

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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HONORABLE STEWART D. AARON (THE COURT): This is the matter of Antolini against McCloskey, 19-cv-9038. This line is being recorded. If I could have the parties identify themselves, please, starting with the plaintiff?

MR. STUART FINKELSTEIN: Stuart Finkelstein for plaintiff, Dino Antolini.

MR. EUNON JASON MIZRAHI: Jason Mizrahi from Levin-Epstein & Associates, PC, counsel for defendants. Good afternoon, your Honor.

THE COURT: All right. Good afternoon.

I'm going to be making certain rulings here, and I'm going to be following it up with a written order that's going to say that following a telephone conference today and for the reasons stated on the record, it is hereby ordered as follows. I'm going to be, as part of this call, making annotated comments. So anyone should feel free to order the transcript, should they so choose.

First, no later than May 7, 2021, "Plaintiffs shall disclose to defendants, A" -- and I'm quoting -- "statement of the compensation to be paid for the study and testimony in the case," close quote, as required by Rule 26(a)(2)(B)(6) of the Federal Rules of Civil Procedure. Plaintiff admits, in the letter he filed at ECF number 162, that this information was not provided.

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2 According to the plaintiff, his expert disclosure states  
3 the compensation has not yet been determined. But the  
4 purpose of the rule is to allow the opposing party to  
5 challenge an expert's credibility and bias, and the Court  
6 finds the plaintiff's current disclosures are not in  
7 compliance with the rule. If plaintiff fails to give this  
8 information by May the 7th, plaintiff shall be precluded  
9 from using this expert at trial.

10 Second, No later than May 14, 2021, defendants  
11 shall serve their expert disclosures pursuant to  
12 Rule 26(a)(2) of the Federal Rules of Civil Procedure. In  
13 my Order dated April 16th, I set today as the deadline for  
14 expert disclosures. That's at ECF 157. Defendants filed a  
15 letter motion at ECF number 159 seeking to extend that  
16 deadline to May the 30th. However, based upon the Court's  
17 review of the record and the submissions by the parties,  
18 the Court finds that two additional weeks is more than  
19 sufficient time for defendants' expert to complete  
20 preparation of the required disclosures. If defendants do  
21 not abide by that May 14th deadline, defendants shall be  
22 precluded from introducing testimony at trial from experts  
23 whose disclosures have not been made.

24 Third, no later than May 7, 2021, defendants shall  
25 file with the Court a complete copy of the transcript of

1  
2 plaintiff's deposition so that the Court may determine the  
3 sanctions, if any, to be imposed upon the parties based  
4 upon the conduct that occurred at the deposition, as well  
5 as any conditions to impose regarding the continuation of  
6 plaintiff's deposition. No further motions or sanctions  
7 shall be filed by the parties at this time. The Court will  
8 provide the parties an opportunity to be heard prior to the  
9 imposition of any sanctions. During plaintiff's deposition  
10 I was called twice. I gave strict warnings there were to  
11 be no further speaking objections, and instructions to  
12 answer were only to be made based upon privilege. Thus, I  
13 am deeply troubled that plaintiff's deposition was halted  
14 by plaintiff's counsel, but I will review the complete  
15 transcript before making any rulings as to sanctions.

16 Fourth, other than as set forth in paragraphs one  
17 and two, discovery is stayed pending further order of this  
18 Court. Once the plaintiff's deposition is concluded, I  
19 will set a schedule for any remaining discovery in the  
20 case. And, given the nature of this case, I don't expect  
21 there'll be much.

22 Are there any questions?

23 MR. FINKELSTEIN: Yes, sir. My question concerns  
24 defendants' behavior at the deposition of defendant, Amy  
25 McCloskey. I pointed out to you and I submitted the

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transcript there. I haven't heard any ruling from you there regarding sanctions, though, your Honor.

THE COURT: You haven't made any motion, you never contacted me in that deposition to talk about the conduct except in one respect. The only respect you contacted me about was an instruction not to answer, and I ruled on that, and I ruled in your favor. I've seen no motion, no proper motion made, except for you deciding to file a complete transcript on the record without having authority to do so. There's no basis for me to rule on that, and I decline to rule on that.

Any other questions?

MR. FINKELSTEIN: When you say you decline to rule on that, you're saying I can't -- you're precluding me from making a motion now on that?

THE COURT: Mr. Finkelstein, you have not made a motion. You plainly know how to make motions. I am not ruling on any requests you have attaching a random transcript to a letter that wasn't authorized. You know how to make motions. If you want to make motions, whatever motion you make, if it's properly made, I will rule on it in due course. I'm not ruling on it now.

Any other questions --

MR. FINKELSTEIN: Okay.

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THE COURT: -- from you before I turn to your  
adversary?

MR. FINKELSTEIN: No, sir. Not at this time.

THE COURT: Okay. Mr. Mizrahi, any questions?

MR. MIZRAHI: Yeah, your Honor. Thank you, again,  
for your attention to this case. I just wanted to be clear  
that the expert disclosure service deadline for defendants  
has been extended to May 14 --

THE COURT: It has.

MR. MIZRAHI: -- and fact discovery is stayed  
without a date pending the Court's determination on the  
Motion for Sanctions and the conditions to impose on the  
continuation of plaintiff's deposition.

THE COURT: No, to be clear, once the deposition  
is concluded, I'm going to set a schedule for the remaining  
discovery.

MR. MIZRAHI: But how has -- it's unclear -- how  
is the -- the Motion for Sanctions, how is it going to  
coincide with the continuation of plaintiff's deposition?

THE COURT: I haven't decided yet. I'm likely  
going to hold off because I want to see what happens at the  
continuation of the deposition to see if the conduct that  
I -- again, I'm going to look at the transcript. I'm  
reserving a decision on that. But if the conduct

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2 continues, then I want to keep open the possibility of  
3 having additional sanctions, if any.

4 MR. FINKELSTEIN: So you've already -- your Honor,  
5 if I may -- I don't know if he's finished yet.

6 MR. MIZRAHI: I'm not finished. If I could just  
7 ask for further clarification, your Honor? You set a  
8 filing deadline for May 7, 2021, to file the deposition  
9 transcript --

10 THE COURT: Yes.

11 MR. MIZRAHI: -- in order to determine what  
12 sanctions, if any, will be necessary based on the conduct  
13 that occurred at the April 19th deposition.

14 THE COURT: Yes.

15 MR. MIZRAHI: And then, subject to that filing,  
16 you were going to be done issuing an Order to impose  
17 certain conditions on the continuation of the deposition.

18 THE COURT: As required, that's right.

19 MR. MIZRAHI: Okay, so we should be expecting an  
20 Order reflecting the continuation of the deposition based  
21 on the Order following the filing, of the May 7th filing?

22 THE COURT: Yes.

23 MR. MIZRAHI: I understand. Okay. And until  
24 then, all discovery is just stayed --

25 THE COURT: Except -- except for what's provided



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in paragraphs one and two with respect to expert reports.

MR. MIZRAHI: Understood, understood.

The second question I have, your Honor, the expert disclosure deadline doesn't necessarily contemplate a complete expert fact discovery completion deadline. We would anticipate possibly taking expert depositions following the submittal of expert reports. I assume there's going to be a date held open for the completion of all discovery after the May 7th file has been submitted?

THE COURT: I will read paragraph four to you again. Other than as set forth in paragraphs one and two hereof, discovery is stayed pending further order of the Court. That includes both fact and expert except as to paragraphs one and two.

MR. MIZRAHI: Thank you, your Honor.

I don't have any further questions at this time.

Mr. Finkelstein?

MR. FINKELSTEIN: Yes. So that I'm clear, he's going to be given an extension of time, maybe, to depose my expert even though his time period expired a number of times. That's number one.

Number two --

THE COURT: No. I'm going to deal with them one at a time. I've made no ruling of any kind. All I've done

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is stayed discovery. All I've done is stayed discovery.

MR. FINKELSTEIN: Well, I'll make the appropriate motion, then, at that point if you're extending it in terms of their deposing my expert whose report was submitted months ago.

In any event, it sounds to me like you're already made a decision that, based upon my requests that I asked for in my letter of my relief that the deposition be deemed waived, any further deposition of my client, based upon defense counsel's behavior at that deposition. So I'm a little confused to hear about sanctions and nothing about them having given up their right and after utilizing the Rule 30 to continue the deposition or to say if something was wrong, because they continued the questioning for hours after the two phone calls to the Court. So I'm wondering about that, your Honor. If you can clear that up for me, I'd appreciate it, please.

MR. MIZRAHI: Your Honor, if I --

THE COURT: No --

MR. MIZRAHI: -- to respond?

THE COURT: I do not want you to respond.

Mr. Finkelstein, I have no idea what you've just said. Did you want me to read the paragraph again to you from my Order? Maybe I need to read it -- granted, you

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don't have it in front of you, so I'm happy to read it again. Would you like me to do so?

MR. FINKELSTEIN: I'd appreciate that. Let me see if I can clarify my question, then. It sounds to me -- we haven't touched on my request that defendants' counsel's deposition of plaintiff is waived based upon their behavior at the deposition of Mr. Antolini.

THE COURT: First of all, I've seen no such motion. And, second of all, I can't imagine that that relief would be granted, but --

MR. FINKELSTEIN: Why? Why is that --

THE COURT: -- I haven't seen any such motion.

MR. FINKELSTEIN: Okay. So I'm --

THE COURT: I haven't seen the motion. Have you --

MR. FINKELSTEIN: No, I've got that.

THE COURT: -- prepared any motion?

MR. FINKELSTEIN: I've got that, your Honor, but how can you decide that it wouldn't be granted even if I submit the motion?

THE COURT: You stopped the deposition, did you not?

MR. FINKELSTEIN: No, I didn't. I said to him no more questions about my arrest, but please continue with

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the deposition of Mr. Antolini. That's what happened,  
Judge.

THE COURT: Right. So you instructed your witness  
not to --

MR. FINKELSTEIN: It's all in my letter.

THE COURT: -- and you instructed the witness not  
to answer, correct?

MR. FINKELSTEIN: It's all in my submission to the  
Court, Judge. It's all part of the record. It's part of  
my letter, and it's part of my -- the deposition, the  
transcript of the deposition. I've never stopped a  
deposition. I told him no more questions regarding my  
arrest record, putting it up on the monitors. You have to  
have read it, Judge. I'll read it for you if you don't  
have it in front of you. And I implored him to continue  
with the deposition of Mr. Antolini. He refused to do  
that.

THE COURT: Okay. I'm going to read --

MR. MIZRAHI: Your Honor, if I --

THE COURT: -- my Order one more time.

No, I do not wish to hear from you, Mr. Mizrahi.  
I'm going to read this paragraph one more time, and I'm  
concluding this call. No later than May 7, 2021,  
defendants shall file with the Court a complete copy of the

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transcript of plaintiff's deposition so that the Court may determine the sanctions, if any, to be imposed upon the parties based upon the conduct that occurred at the deposition, as well as any conditions to impose regarding the continuation of plaintiff's deposition. No further motions for sanctions shall be filed by the parties at this time. The Court will provide the parties an opportunity to be heard prior to the imposition of sanctions.

MR. FINKELSTEIN: Okay. I got it. Thank you.

THE COURT: Okay. All right. This matter's adjourned.

(Whereupon, the matter is recessed.)

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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Antolini v. McCloskey et al, Docket #19-cv-09038-GBD-SDA, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: May 11, 2021